

Escrow Agreement For Latent Defects

U.S. Department of Housing
and Urban Development
Office of Housing

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THIS AGREEMENT is effective the _____ day of _____, 20____
by and between _____, the
Lender and _____, the
Borrower. The terms Lender and Borrower shall be deemed to have the meanings
set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower has completed construction of a project known as
_____ and further identified as HUD Project
No. _____.

The Borrower is required to furnish a guarantee against latent defects, faulty
workmanship and defective materials for a period of one year following the date
of final completion of the project; and

The date of final completion of the project was _____, 20____.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower herewith deposits with the Lender, and the Lender hereby
acknowledges receipt of, the sum of \$_____ (the Fund)
which is an amount equal to 2 1/2 % of the total amount of the Construction
Contract to be retained for a period of fifteen months from the date of final
completion, in the form of cash or an irrevocable, unconditional letter of credit
issued to the Lender by a banking institution. The Fund is held by the Lender
under the Contract of Mortgage Insurance for and on behalf of the Borrower.
2. The Fund shall be maintained by the Lender to guarantee against defects
in the construction due to faulty materials or workmanship, defective materials
or damage to the project resulting from such defects, which defects or damage
become apparent within one year after the date of final completion. Said Fund
may be used for the correction of such defects or damage, as may be required
by either the Lender or the U.S. Department of Housing and Urban
Development (hereinafter, HUD), in the event the Borrower fails to make such
corrections.
3. The Borrower covenants and agrees on demand of either the Lender or
HUD to remedy or cause to be remedied all defects in construction due to faulty
workmanship, defective materials, or damage to the project resulting from such
defects, within 60 days of notification by the Lender or HUD.

4. The Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in Form HUD-92554, Supplementary Conditions of the Contract for Construction, or its replacement, as acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate on the back of Form HUD-92448, Contractor's Requisition, Project Mortgages, or its replacement. The Borrower expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any funds deposited hereunder, the Borrower will submit a Contractor's Prevailing Wage Certificate duly executed by each and every contractor performing any of the work and dated subsequent to the completion of such work.

5. The Lender shall maintain such Fund separate from any escrow that may have been provided to assure completion of any incomplete construction items. The Fund shall be disbursed as follows:

- a. In the event the Borrower fails to comply with the provisions of Paragraph 3 of this Agreement, the Lender shall have the right and/or option to proceed to correct all said defects in construction and pay the cost thereof, including all the costs of the Lender, from the Fund. For this purpose, the Borrower hereby irrevocably authorizes and empowers the Lender to do and perform in its name and with full powers of substitution all matters and things which said Lender shall in its judgment deem necessary and proper to be done to effectuate the completion of said repairs and to apply the moneys herewith deposited to the payment of debts contracted or incurred. This warrant of attorney shall be the Lender's full and sufficient authority as attorney-in-fact for the Borrower for all payments made by virtue thereof. The Borrower hereby irrevocably authorizes and empowers the Lender to enter into and upon the said Project and take charge of all materials on the Project and in the name of the Borrower, as its attorney-in-fact, to call upon and require contractors to do that repair work which is their responsibility. To the extent that the Lender and/or its contractors complete said repairs, such work remains subject to the labor standards referenced in Section 4 of this Agreement, and the Lender shall obtain a Contractor's Prevailing Wage Certificate duly executed by each contractor performing any of the work.
- b. The entire Fund or, if any sums were expended in accordance with the above paragraph, any balance remaining therein shall be returned to the Borrower upon the expiration of the time designated above unless there is a default under the Security Instrument.
- c. In the event the Borrower completes the repairs in the time period specified at paragraph 3 above, or no defects become apparent within one year after completion of the project and there is no default under the Security Instrument, the Lender shall upon written approval of HUD, return to the Borrower the amount of the deposit, together with interest.

- d. Any and all disbursements from said Fund shall be made only upon the prior written approval of HUD.
6. In the event the Mortgage is assigned to HUD at any time during which the Fund has a balance remaining therein in the form of an unconditional letter of credit, the Borrower hereby authorizes the Lender to draw the remaining balance of said letter of credit in cash, if so required by HUD, and to deliver such cash to HUD as required pursuant to paragraph 6 hereof,
7. In the event of a default by the Borrower under the Security Instrument and an assignment of the Security Instrument to HUD, the entire Fund or balance remaining therein shall be paid to HUD together with an assignment of all rights hereunder granted to the Lender. In such event, HUD may apply said funds to sums due under the Note. In the event the Lender elects to foreclose the Security Instrument in lieu of assigning it to HUD, the Lender may apply said funds to sums due under the Note.
8. The Borrower's liability for the correction of defects or damage shall not be limited by the amount of the Fund established hereunder.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER:

LENDER:

By:_____

By:_____

Print Name and Title

Print Name and Title

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R parts 24 and 28.